

**Nursing and Midwifery Council
Fitness to Practise Committee**

**Substantive Order Review Meeting
Thursday 13 October 2022**

Virtual Meeting

Name of registrant: Miss Diane Jane Hutchinson

NMC PIN: 08C0874E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing - April 2008

Relevant Location: Essex

Type of case: Misconduct

Panel members: Tracy Stephenson (Chair, Lay member)
Gregory Hammond (Lay member)
Jane Jones (Registrant member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Margia Patwary

Order being reviewed: Suspension order (12 months)

Outcome: **Striking off order to come into effect on 22
November 2022 in accordance with Article 30
(1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Hutchinson's registered email address on 9 September 2022.

The panel took into account that the Notice of Meeting provided details of the review including the information that the meeting would take place no earlier than 10 October 2022.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Hutchinson has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons for determination to be partly private

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that NMC proceedings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Rule 19 states:

- '19.— (1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.*
- (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.*
- (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—*
- (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and*
- (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.*
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—*
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and*

(b) *having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.*

(4) *In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.’*

Although this is a meeting and therefore conducted in private, being aware that there will be references to Miss Hutchinson’s health, the panel decided that those parts in its written determination relating to her health would be treated as private.

Decision and reasons on review of the current order

The panel decided to impose a striking off order. This order will come into effect at the end of 22 November 2022 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the fifth effective review of a substantive order. On 21 April 2017 a panel of the Conduct and Competence Committee imposed a suspension order for a period of 12 months. This was reviewed by a panel of the Fitness to Practise Committee on 11 May 2018 and a conditions of practice order was imposed for 24 months. On 7 April 2020 a conditions of practice order was imposed for a further 12 months. On 13 April 2021 a suspension order was imposed for a period of six months. On 15 October 2021, the last reviewing panel decided to impose a suspension order for a period of 12 months.

The current order is due to expire at the end of 22 November 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved, by way of admission, through a consensual panel determination, at the substantive hearing on 21 April 2017, which resulted in the imposition of the substantive order was as follows:

That you, a registered nurse:

- 1. Failed to cooperate with an investigation by the Nursing and Midwifery Council into your fitness to practise in that, between 23 May 2016 and 14 July 2016, [PRIVATE].*

The last reviewing panel determined the following with regard to impairment:

[PRIVATE]. The panel also noted that there was no information before it to indicate a development of insight on Miss Hutchinson's part, [PRIVATE] or into the concerns

regarding her lack of engagement and its impact on patients and confidence in the nursing profession.

The panel had regard to the email from Miss Hutchinson's partner, which it considered provided some explanation for the position with regards to her continued lack of engagement. The panel noted that Miss Hutchinson's partner stated that he had been keeping information regarding these proceedings from Miss Hutchinson, in order to [PRIVATE].

The panel therefore considered that there was nothing to suggest that the concerns in this case had been addressed and the risks identified by previous panels had been mitigated. The panel considered that there remains a risk to patients and members of the public if Miss Hutchinson were able to practise without restriction. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel had regard to Miss Hutchinson's continued lack of engagement with these proceedings, [PRIVATE]. The panel bore in mind that registrants have a duty to engage with their regulator. The panel appreciated the context of Miss Hutchinson's lack of engagement, as explained in the email provided by her partner. However, without any up to date information from her, the panel determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

For these reasons, the panel finds that Miss Hutchinson's fitness to practise remains impaired.'

The last reviewing panel determined the following with regard to sanction:

'The panel bore in mind Miss Hutchinson's lack of engagement, but also had regard to the context and explanation given for this by her partner. This information

suggested that Miss Hutchinson did want to return to nursing in the future, and that she may be in a position to engage, [PRIVATE]. [PRIVATE], [PRIVATE] in order to assist a future panel. It would also give Miss Hutchinson time to provide direct information regarding her future intentions in relation to nursing, as well as to develop her insight.

The panel considered whether to impose a striking-off order. Whilst the panel noted Miss Hutchinson's continued lack of engagement, it bore in mind the information provided by her partner, [PRIVATE]. The panel noted that the email represented some engagement, although not directly from Miss Hutchinson. It suggested that she does have an intention to return to nursing practice in the future, [PRIVATE]. In these circumstances, the panel determined that a striking-off order would be disproportionate, [PRIVATE].

The panel therefore determined that a suspension order is appropriate and proportionate in the circumstances of this case. It was satisfied that such an order would protect the public and maintain confidence in the nursing profession and the NMC as a regulator.

The panel determined to impose this suspension order for 12 months. [PRIVATE].

In accordance with Article 30(1) of the Order, this suspension order will come into effect upon the expiry of the current suspension order, namely at the end of 22 November 2021.

This order will be reviewed prior to its expiry. The reviewing panel may revoke the order, allow the order to lapse upon expiry, extend the order or replace the order with another order.

A future reviewing panel may be assisted by:

- *Engagement from Miss Hutchinson with the NMC, including information regarding her future intentions in relation to nursing, and attendance at the next review hearing;*
- *[PRIVATE];*
- *[PRIVATE];*

- *References and testimonials from any employment or voluntary work undertaken by Miss Hutchinson, whether or not in a healthcare setting; and*
- *A written reflection from Miss Hutchinson demonstrating her insight into the incidents which led to these proceedings and the importance of engagement with her regulator.'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Hutchinson's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and a single email response from Miss Hutchinson's email account dated 9 August 2022.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Hutchinson's fitness to practise remains impaired.

The panel considered that since the last review hearing, there has been no material change or new evidence for it to consider. The panel noted that on 29 July 2022 Miss Hutchinson's case officer had requested her to respond to a number of emails, addressing the email to her partner but using her registered email address as per the correspondence received during the previous panel hearing. A response was received from the email account on 9 August 2022, saying "Aok". No further correspondence was received from Miss Hutchinson or anyone acting on her behalf. [PRIVATE].

[PRIVATE].

In the absence of any evidence of Miss Hutchinson demonstrating sufficient insight, reflection or any remediation, the panel determined that she is still liable to repeat matters of the kind found proved. The panel also therefore considered that there was nothing to suggest that the concerns in this case had been addressed and the risks identified by

previous panels had been mitigated. The panel considered that there remains a risk to patients and members of the public if Miss Hutchinson were able to practise without restriction. The panel therefore determined that a finding of impairment remains necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Miss Hutchinson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Hutchinson's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel noted that the third effective reviewing panel in April 2021 had made it clear in their determination that it had considered a striking off order:

'The panel wished to emphasise to Miss Hutchinson that it gave very serious consideration to making a striking-off order in this case. In the absence of any further evidence from her, and with no engagement at all since the last review hearing, there was very little to suggest that a further period of conditional registration or suspension would achieve any further progress in addressing the concerns identified in this case...

...On balance, the panel therefore considered that at this stage, escalation from a conditions of practice order to a period of suspension would be sufficient to meet the wider public interest considerations in this case. Temporary rather than permanent removal from the register would be sufficient, at this stage, to send a clear signal to Miss Hutchinson and to the public that an ongoing failure to engage with the regulatory process is not acceptable and will not be tolerated. At this stage, this would be sufficient to meet the wider public interest objectives of declaring and upholding professional standards in order to maintain public confidence in the profession and the regulator.'

The panel noted the determination further stated:

'However the panel considered that it was important that Miss Hutchinson should understand the risk that if she continues to disengage from these proceedings and to fail to provide evidence of development and progress, a future panel may decide that the situation has become incompatible with ongoing registration and that the

available sanction options are far more limited. Any future reviewing panel will, like this panel, have the option of a striking-off order available to it. It is important that Miss Hutchinson now takes this opportunity to re-engage with the process, reflect on her future career intentions, and take the actions recommended below before the next review.'

The panel noted that the last reviewing panel on 15 October 2021 had received a response from Miss Hutchinson's partner during the hearing and based on this the panel decided to give her a further opportunity to engage with the proceedings as the email gave ...[PRIVATE]. After imposing a further suspension order on Miss Hutchinson's practice, the last panel had regard to the recommendations to Miss Hutchinson and guided her to what a future panel would be assisted by in the following terms:

- *Engagement from Miss Hutchinson with the NMC, including information regarding her future intentions in relation to nursing, and attendance at the next review hearing;*
- *[PRIVATE];*
- *[PRIVATE];*
- *References and testimonials from any employment or voluntary work undertaken by Miss Hutchinson, whether or not in a healthcare setting; and*
- *A written reflection from Miss Hutchinson demonstrating her insight into the incidents which led to these proceedings and the importance of engagement with her regulator.*

No information has been provided to this panel to suggest that Miss Hutchinson had addressed what was requested of her by the previous panel.

The panel went on to consider the sanction options available to it today.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the need to protect the public. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Hutchinson's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Hutchinson's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered the imposition of a conditions of practice order. The panel was mindful that any conditions imposed must be measurable, workable and practicable. The panel bore in mind that Miss Hutchinson was previously subject to a conditions of practice order for 3 years, but due to her lack of engagement, a new conditions of practice order would be unworkable. The panel therefore concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. It determined that a further period of suspension would not serve any useful purpose, considering Miss Hutchinson's lack of engagement with these proceedings. The panel noted that apart from the single word email on 9 August 2022 from Miss Hutchinson's registered email account, Miss Hutchinson has not engaged with her regulator and therefore has not provided any evidence of engagement, insight or remediation. As a result, she continues to pose a risk to public protection and to the public interest.

The panel went on to consider a striking off order. It concluded that the only appropriate sanction in these circumstances that would adequately protect the public and serve the public interest was a striking-off order. [PRIVATE]. The panel considered that Miss Hutchinson's practice had been continuously restricted since 2017 and there has been no meaningful engagement from her with these proceedings. The panel concluded that the only appropriate and proportionate sanction in these circumstances to protect the public and maintain public confidence in the profession is that of a striking off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 22 November 2022 in accordance with Article 30(1).

This decision will be confirmed to Miss Hutchinson in writing.

That concludes this determination.